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ANNUAL REPORT 1986-87

Alberta Public Health

Advisory and Appeal Board

Alberta
COMMUNITY AND
OCCUPATIONAL HEALTH

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Alberta

Minister of
COMMUNITY AND OCCUPATIONAL HEALTH
402 Legislature Building, Edmonton, Alberta, Canada T5K 2B6 403/427-2331

CANADIANA

DEC 11 1989

May, 1988

Dr. David Carter
Speaker
Legislative Assembly of Alberta
325 Legislature Building
EDMONTON, Alberta
T5K 2B6

Sir:

I have the honour to present the Annual Report of the Public Health Advisory and Appeal Board for the year August 1, 1986 to July 31, 1987.

Respectively submitted,

Jim Dinning
Minister, Community
and Occupational Health

May 1988

Honourable Jim Dinning
Minister
Alberta Community and Occupational Health
Room 424 Legislature Building
Edmonton, Alberta

Dear Mr. Dinning;

In accordance with Section 6(1) of the Public Health Act 1984, The Public Health Advisory and Appeal Board is pleased to present its Annual Report for the year ending July 31, 1987.

Yours sincerely,

Dr. T. John Walker
Chairman
Public Health Advisory and
Appeal Board of Alberta

Executive Summary

The Public Health Advisory and Appeal Board has a mandate to advise the Minister of Community and Occupational Health on matters relating to the public health, and to carry out investigations or inquiries at his direction. In addition, the Board is empowered to hear appeals against certain actions and decisions of a local board of health.

This past year was the busiest yet as the Board divided its time between advisory and appeal work. Recommendations were given to the Minister on public health issues in Alberta and a total of eight appeals were heard.

The Board kept up to date on public health issues through contacts with health authorities nationally and internationally and by attending conferences and workshops. Also, the practice of meeting with Boards and staff of local health units continued, bringing to nine the total visits since 1985.

The workload of the Board has increased considerably and outgrown the present system of sharing administrative staff with other boards and councils. During 1986-87, the Public Health Advisory and Appeal Board explored options to improve administrative efficiency and enhance research and planning.

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Public Health Advisory and Appeal Board

T.J. (John) Walker, M.D.
CHAIRMAN
Fort MacLeod

Gerry Blum
MEMBER
Calgary

Max McCann
VICE-CHAIRMAN
St. Albert

Sergi Causing, M.D.
MEMBER
Edmonton

Muriel Abdurahman
MEMBER
Fort Saskatchewan

Kathleen Clarke
MEMBER
Calgary

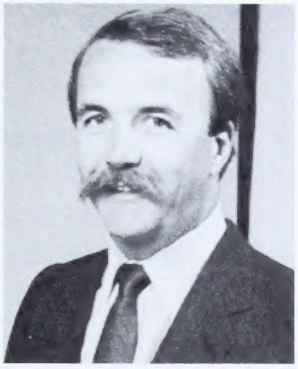
1986-87 Board Membership

Barbara Cumberland
MEMBER
Red Deer

Charles (Chick) Taylor
MEMBER
Medicine Hat

Robert (Bob) Field
MEMBER
Grande Prairie

Jenny Malanchuk
Co-ordinator
Advisory and Appeal
Secretariat
Edmonton



Norman Maloney
MEMBER
Calgary

History and Mandate

The Public Health Advisory and Appeal Board was formed recently, on July 31, 1985 (under Section 2 of the Public Health Act, Chapter P-27.1 R.S.A. 1980). It replaced the Provincial Board of Health which had its origins in Alberta's first Public Health Act (c. 1909).

The purpose of the Provincial Board of Health, as stated in the 1909 Act, was "to take cognizance of the interests of health and life among the people of the Province." It had appeal and advisory functions and used its powers broadly for the protection and improvement of health and the prevention of disease. The Board was made up mostly of government officials from various departments concerned with health issues.

The Public Health Advisory and Appeal Board has a similar mandate to protect the health of Albertans on behalf of the government of Alberta, but it differs in its composition. It is made up of 10 members with varied professional backgrounds who represent all parts of the province.

The Board has a dual purpose as an advisory and appeal body. Its appeal mandate is explicitly spelled out in the most recent version of the Public Health Act. As an appeal tribunal the Board is available to any person who is adversely affected by a decision made by a local Health Unit Board and who feels unjustly treated. The decision can be appealed to the Public Health Advisory and Appeal Board which has the power to confirm, reverse, or vary it.

The Board's other role is to advise the Minister on matters regarding the public health by making investigations or inquiries, collecting information, or conducting research. On the request of the Lieutenant Governor in Council, the Board may be empowered to hold public hearings to receive submissions on Public Health matters.

The Board has a dual purpose as an advisory and appeal body.

Advisory Activities

Early in the year the Board was asked by the Minister for recommendations on the following: the Public Health Act; organization of public health services in Alberta; innovations in public health; the generating of revenues for public health; how public health services could be provided in times of restraint; and what public health research is required. Workshops were held by the Board to study the priorities and a response was presented to the Minister in June, 1987.

The Board feels that its full potential as an advisory committee has not yet been fully realized. For instance, there have been a number of recent public health issues in which the Board could have been involved including the irradiation of foods for sterilization and the study on cancer incidence in County 20 . In addition there are ongoing issues including teenage sexuality, AIDS, and the provision of care for the elderly.

To carry out its advisory activities the Board and its administrative support have attempted to stay abreast of government activities surrounding public health emergencies such as sour gas blowouts and longer-term public health concerns. This helps the Board to stay current on matters concerning public health and give the Minister an alternate source of advice on public health issues, other than the department. The Board feels strongly that it can provide a broad perspective that would balance the very specific and technical opinions of the department.

The Board plays an important role as an advisory committee to government.

Appeal Activities

The Public Health Act establishes this Board as an Appeal body to hear appeals from decisions of local boards as defined in Section 4 of the Public Health Act. The Board may confirm, reverse or vary the decision of a local board, and is obliged to give written notice of its decision to the Appellant and the local board.

The Board is subject to the general rules of administrative law and natural justice as they apply to quasi-judicial tribunals. To that end, the Board has retained Donald R. Cranston of the law firm Layton, Weeks and Cranston, to provide independent legal advice.

The Board heard a total of eight appeals this year.

A total of eight appeals were heard this year. Five had to do with the storage, packaging and handling of food for sale to the public. A number of other appeals were considered but, for various reasons, did not reach the hearing stage.

The table that follows is a summary of all appeals heard by the Board from July 31, 1985 to August 1, 1987.

PUBLIC HEALTH ADVISORY AND APPEAL BOARD DECISIONS FROM JULY 31, 1985 TO AUGUST 1, 1987

Decision #	Subject	Parties involved
01/85*	Appeal of decision re: refuse disposal system	Foothills Health Unit City of Calgary Genstar Corp.
02/85	Appeal of approval of piggery operation	Leduc-Strathcona Health Unit C.J. Libby M.G. Coates
03/85	Appeal of order to cease burning at waste management facility	Stony Plain -Lac Ste Anne Health Unit Town of Whitecourt
01/86	Appeal of order for disposal of animal waste refuse	Stony Plain-Lac Ste Anne Health Unit Sprucewood Farms Ltd.
03/86	Appeal of refusal of application to develop waste management facility	Mount View Health Unit Rockyview Municipal District No.4
04/86	Appeal of permit to operate a modified landfill site	South Peace Health Unit Kim and Bruce McLean
05/86	Appeal of order to cease manufacturing and distribution of smoked food products	Vegreville Health Unit G. and H. Tymchyshyn Tiny Tym's Poultry Ltd.
06/86	Appeal of refusal of permit to operate a waste management facility	Leduc-Strathcona Health Unit Rae-Dawn Construction Ltd.
07/86	Appeal of order to clean and remove liquid waste	Barons-Eureka-Warner Health Unit Alberta Hide Processors Ltd.
08/86	Appeal of permit to operate sanitary landfill site	Foothills Health Unit City of Calgary Genstar Corp. et al

Decision #	Subject	Parties involved
12/86a	Appeal of refusal of permit to operate a waste management facility	Leduc-Strathcona Health Unit Rae-Dawn Construction Ltd.
12/86b	Appeal of order to discontinue sale of bulk frozen fish and meat products	Alberta West Central Health Unit Freson Market Ltd.
008/87	Appeal of Calgary Board of Health decision to grant waiver for use of additional vending cart	Calgary Board of Health Mr. Barry Thurn Mr. Potorocza
01-5/87	Appeal of orders to cease selling or offering for sale perishable foods on a self-serve basis	Edmonton Board of Health Canada Safeway Ltd.
006/87	Appeal of decision to grant development approval for a sanitary landfill site	South Peace Health Unit City of Grande Prairie Mrs. Beverly Walker Citizens to Protect Our Environment
009/87	Appeal of decision to close the Beavallon landfill site	Vegreville Health Unit County of Two Hills No.21
*11/87	Appeal of decision re: refuse disposal system	Foothills Health Unit City of Calgary Genstar Corp.

* Decisions on related matters

1986-87 Summary of Appeals

12/86b: Freson Marketing Ltd.

Hearing held: October 16, 1986

Freson Marketing Ltd. appealed an Order by the Alberta West Central Health Unit prohibiting Freson from selling frozen fish and meat products from bulk containers on a self-serve basis. It was held that the food regulations prohibited the appellant from selling fish and meat products in bulk, on a self-serve basis. Freson Marketing Ltd. also made application for a waiver of Section 78 of the food regulation. On that application, the Board directed that the matter be referred back to the local board for reconsideration within three months on certain conditions, including testing of the foods, supervision by employees of Freson Marketing Ltd., posting of proper instructions for use of the bulk bins and supervision by the local health unit of the sale of the bulk foods until the local unit's reconsideration was complete.

03/86: Rockyview Modified Landfill Site

Hearing held: October 30, 1986

This was an appeal by 17 individual appellants of the decision by the Mountain View Health Unit allowing the Municipal District of Rockyview to develop a modified landfill effective September 8, 1986. The Board decided to uphold the decision of the Mountain View Health Unit to allow development of the landfill where proposed, upon certain express conditions, including adherence to certain standards, groundwater monitoring, and supervision.

12/86a: Rae Dawn Construction Ltd.

Hearing held: November 19, 1986

Rae Dawn Construction Ltd. appealed a denial by the Leduc-Strathcona Health Unit of a waiver of Sections 26(3) and 54(1)(a) of the waste management regulations pursuant to the Public Health Act, regarding the use of a landfill site by the appellant. The Board was not satisfied that the requirements of the waiver regulation were fulfilled, and therefore, no waiver of the relevant regulations was warranted.

001-005/87: Canada Safeway Ltd.

Hearing held: March 17, 1987

Canada Safeway Ltd. appealed the decision of the Edmonton Board of Health prohibiting the sale by Safeway of perishable foods on a self-serve basis. It was decided by the Board that the appeal of Canada Safeway should be denied. The Board found that Safeway was selling "perishable foods" in bulk form on a self-serve basis, which was prohibited by the food regulation.

008/87: Thurn Winn-com Canada Corp. and Oasis Hot Dog Ltd.

Hearing held: March 18, 1987

Mr. Barry Thurn, Winn-com Canada Corp. and Oasis Hot Dog Company Ltd. appealed the decision of the Calgary Board of Health to grant a waiver to Mr. Potorocza and Orange Grove Canada Corp. allowing Mr. Potorocza to use one additional vending cart. At the outset of the appeal, the Calgary Board of Health objected to the jurisdiction of the Board to hear an appeal from Mr. Thurn. The Board decided that pursuant to the Public Health Act, Mr. Thurn was not a person directly affected by the waiver decision made by the Calgary Board of Health in favour of Mr. Potorocza, and accordingly, the Board did not have jurisdiction to hear this appeal.

006/87: Walker and the Citizens to Preserve our Environment Group

Hearing held: April 7, 1987

Beverly Walker, representing a group called Citizens to Preserve our Environment, appealed the decision of the South Peace Health Unit granting development approval for a sanitary landfill site in favour of the City of Grande Prairie. In upholding the decision, the Board was of the view that the concerns had been adequately met by the engineers in charge of the design and application plans for the landfill, and all the public health issues had been satisfied.

009/87: County of Two Hills No. 21

Hearing held: May 20, 1987

The County of Two Hills No. 21 appealed an Order issued by the executive officer of the Vegreville Health Unit to close a refuse disposal site and to have same reclaimed to the satisfaction of the local board on or before December 31, 1987. The Board decided to uphold the Order and deny the appeal by the County of Two Hills No. 21. The Board found that the refuse disposal site was unlicensed, uncontrolled, unfenced, located near swamp land and farm land, and therefore, the site was found to be within the definition of "nuisance" found in the Public Health Act. Arguments by the County that it needed to maintain the site until its regional landfill site was in operation, some two to four years in the future, did not outweigh the public health concerns raised.

11/87: The City of Calgary and Genstar Corp.

Hearing held: future dates

The City of Calgary and Genstar Corp. made application for a stay of a decision by the Provincial Board of Health granting approval for the development of a refuse disposal system to Browning Ferris Industries. The appellants asked for the stay on the basis that the decision of the Board made in October of 1985, denying an appeal of the Provincial Board's Order of June 15, 1985, had been quashed by the courts, and therefore the issue of development was now back before the Board. In view of this, it was argued a stay ought to be granted pending the hearing. The Chairman heard this application in June 1987 and found that a stay should not be issued. The site was operating properly and in accordance with the waste management regulations and the permits issued, and there was no balance of convenience in favour of the applicants. The appeal itself has yet to be heard.

Victorian Order of Nurses

No hearing held.

The Victorian Order of Nurses filed a Notice of Appeal with the Board on November 25, 1986. It was determined by the Board that it had no jurisdiction to hear the appeal, and accordingly, no hearing was convened.

Other Activities

Public relations is an essential component of the Board's activities. Through these activities the Board is able to communicate its mandate and, in turn, is able to become better informed about the public health work of others.

A very successful Board public relations effort has been its practice of visiting local Boards of Health throughout the Province. This year health units in Fort McMurray, Red Deer, Grande Prairie, and Vegreville were visited, bringing to nine the total contacted since the Board was established. In 1985-86, health units in Sturgeon, Alberta East Central, South Peace, Chinook and Calgary were visited.

Out of these face-to-face meetings both the Public Health Advisory and Appeal Board and the local health units have gained a better understanding of each other's work. One important outcome has been that the quasi-judicial nature of the Board is becoming better understood helping to clear up concerns at the local level about the Board's appeal functions.

The Board's public relations objectives over the next few years are to continue visiting the local Boards of Health, meeting with as many as possible, to maintain contacts with other organizations in the Province concerned with health care. The help and co-operation of the Health Unit Association of Alberta, by virtue of its practice of distributing all appeal decisions of the Board including waiver decisions of local health units to all relevant parties is gratefully acknowledged.

The Board has visited nine local Boards of Health throughout the province.

EDUCATION

The Board participated in two conferences this year; the Annual General Meeting of the Health Unit Association of Alberta and a seminar on Environmental Health Law. It is the intent of the Board to continue to broaden its educational pursuits.

ADMINISTRATIVE SUPPORT

The Board acknowledges the assistance of the Deputy Minister and staff of the Department of Community and Occupational Health.